

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

KEVIN A. TOLLIVER,

Plaintiff,

v.

**ANNETTE CHAMBERS-SMITH
(DIRECTOR), et al.,**

Defendants.

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: **Case No. 2:22-CV-4566**
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: **Chief Judge Algenon L. Marbley**
: **Magistrate Judge Elizabeth P. Deavers**
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ORDER

This matter is before this Court on Plaintiff’s original Complaint (ECF No. 4), the Magistrate Judge’s First Report and Recommendation (“First R&R”) (ECF No. 5), Plaintiff’s Amended Complaint (ECF No. 9-1), and the Magistrate Judge’s Second Report and Recommendation (“Second R&R”) (ECF No. 12). Plaintiff is a state prisoner proceeding without the assistance of counsel who alleges violations of his civil rights with respect to a 2019 parole hearing. (*See* ECF No. 9-1). The Magistrate Judge’s First R&R recommended that this Court dismiss the original Complaint in its entirety as frivolous or for failing to state a claim upon which relief may be granted. (ECF No. 5 at 20). Plaintiff filed objections to the First R&R (ECF No. 8) and a motion for leave to file an amended complaint (ECF No. 9). Plaintiff then filed an Amended Complaint which is the subject of the Second R&R. As a result, this Court **REJECTS** the First R&R (ECF No. 5) as **MOOT**.

On October 11, 2023, the Magistrate Judge issued the Second R&R withdrawing the previous recommendation and recommending that this Court dismiss most of Plaintiff’s claims but permitting one claim to go forward, namely, that the Board may have relied upon erroneous

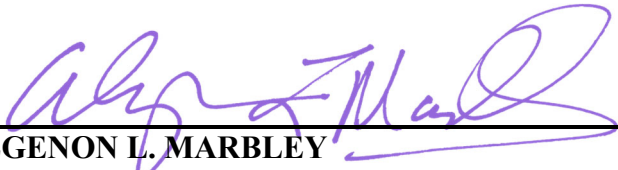
information in making their parole decision. (ECF No. 12 at 15-16). The Plaintiff and the Defendants were advised that they had fourteen (14) days to raise any objections, and that failure to object within the applicable time period would result in a waiver of the right to have the district judge review the R&R *de novo*. (*Id.* at 26-27).

This Court has reviewed the Second R&R. Noting no objections and that the time for filing such objections under Fed. R. Civ. P. 72(b) has expired, this Court **ADOPTS** the Second R&R (ECF No. 12) as this Court's findings of facts and law. This Court hereby **DISMISSES** the following claims:

1. All claims against the ODRC, OAPA, and OPB; and
2. All claims arising under the Fifth Amendment (remaining silent); the Sixth Amendment (counsel); the Eighth Amendment (cruel and unusual punishment); and the Fourteenth Amendment (equal protection and substantive due process, as well as procedural due process, with the exception of the narrow issue identified in the R&R).

Plaintiff will be permitted to **PROCEED**, however, against the eight individual defendants in their official capacities on his claim that he was denied parole based on false information in violation of procedural due process under the Fourteenth Amendment.

IT IS SO ORDERED.



ALGENON L. MARBLEY
CHIEF UNITED STATES DISTRICT JUDGE

DATED: November 16, 2023